STATE OF MICHIGAN

COURT OF APPEALS

VICTOR KNIGHT and ANNETTE KNIGHT,

Plaintiffs/Counterdefendants-Appellants,

v

GEMCRAFT HOMES, INC., and PIER ANGELI,

Defendants/Counterdefendants-Appellees,

and

CLINTON VALLEY TITLE COMPANY,

Defendant/Counterplaintiff.

UNPUBLISHED
August 9, 2005

No. 253469
Oakland Circuit Court
LC No. 03-049760-CH

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiffs/counterdefendants (plaintiffs) appeal as of right an order of dismissal of the counterclaim of defendant/counterplaintiff, Clinton Valley Title Company, and an order referring this case to arbitration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs assert that the trial court erred in ordering the dispute to go to arbitration because the dispute concerned the escrow agreement and not the building agreement. Plaintiffs entered into a building agreement with defendant/counterdefendant, Gemcraft Homes, Inc (Gemcraft), and the contract contained an arbitration provision. The determination of the arbitrability of a dispute is a question of law subject to de novo review. *Madison District Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). "The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court rather than for the arbitrators," and these questions are reviewed de novo. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000).

MCR 2.116(C)(7) allows for summary disposition of a claim on the ground that the claim is barred because of an agreement to arbitrate. "We review a trial court's grant or denial of a motion for summary disposition under MCR 2.116(C)(7) de novo to determine whether the

moving party was entitled to judgment as a matter of law." *Watts, supra*, at 603. In reviewing a motion under subsection (C)(7), "this Court accepts as true the plaintiff's well-pleaded allegations and construes them in plaintiff's favor." *Id*. This Court "must consider the pleadings, affidavits, depositions, admissions, and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists." *Id*.

Michigan public policy favors arbitration to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 127-128; 596 NW2d 208 (1999). The purpose of arbitration is to avoid prolonged litigation, and its effect is to narrow a party's right to litigation. *NuVision v Dunscombe*, 163 Mich App 674, 684; 415 NW2d 234 (1988); *Hendrickson v Moghissi*, 158 Mich App 290, 298; 404 NW2d 728 (1987). "To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Madison Pub Schools, supra*, at 595. Doubts about whether an issue can be arbitrated should be resolved on the side of arbitration of the issue. *Watts, supra*, at 608.

Both plaintiffs and Gemcraft alleged that the other breached the building contract. In their complaint, plaintiffs allege that Gemcraft breached the building contract, which expressly calls for "[a]ny controversy or claim arising out of or relating to this contract, or the breach thereof," to be settled by arbitration. The dispute related to the relative duties of the parties under the contract to, on one hand, construct the home properly, and, on the other hand, to pay for the construction. Both parties also alleged that the other had breached the building contract by failing to properly construct the house and failing to make construction draw payments, respectively. Therefore, the dispute arose out of the building contract and the terms of the arbitration clause are applicable.

Plaintiffs also assert that MCL 600.5005 expressly prohibits arbitration of disputes over fee ownership in land, and because this dispute concerns the deed held in escrow, the dispute cannot be arbitrated. The trial court did not address this argument. Although appellate review is normally circumscribed to issues decided by the trial court, *Candelaria v B C Gen Contractors Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999), we address this issue because it is a question of law and the necessary facts are presented, *Michigan Twp Participating Plan v Fed Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999).

The uniform arbitration act, a part of the Revised Judicature Act, authorizes arbitration in Michigan. MCL 600.5001. However, certain property disputes such as disputes over fee interests in land and life estate interests cannot be submitted to arbitration. MCL 600.5005. Plaintiffs compare the present case with *McFerren v B & B Inv Group*, 233 Mich App 505; 592 NW2d 782 (1999). In *McFerren*, the plaintiff brought an action to quiet title to realty, and the defendant counterclaimed, seeking to quiet title in its favor. *McFerren, supra*, at 506-507. The Court held that under MCL 600.5005, the arbitrator lacked jurisdiction to decide quiet-title claims, which presented a dispute regarding fee ownership of real property. *McFerren, supra* at 511.

This case, by contrast, concerns a dispute over a building contract, not ownership of land. The quitclaim held in escrow is merely a remedy for a default by the buyers. The escrow agreement implements the building contract's terms, and it is not an instrument conveying an

interest in land. This case is unlike *McFerren*, *supra*, because that case was a quiet title action, not a contract dispute. The dispute at bar does not concern ownership of the land, but rather, concerns which party breached the building contract first. Therefore, MCL 600.5005 does not bar the issue of breach of the building contract from being submitted to arbitration.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray